

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAFAEL RIVERA,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

CASE NO. C15-5673 BHS

ORDER GRANTING
PLAINTIFF'S MOTION TO
WITHDRAW HABEAS
PETITION, DECLINING TO
ADOPT REPORT AND
RECOMMENDATION AS MOOT,
AND DISMISSING ACTION
WITHOUT PREJUDICE

This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 9), and Petitioner Rafael Rivera's ("Rivera") motion to withdraw habeas petition (Dkt. 10).

On September 18, 2015, Rivera filed a motion to proceed *in forma pauperis* and a proposed petition for a writ of habeas corpus under 28 U.S.C. § 2254. Dkt. 1. On October 29, 2015, Judge Christel issued the R&R, recommending the Court dismiss Rivera's petition without prejudice as a second or successive petition. Dkt. 9. Judge Christel also recommended denying the motion to proceed *in forma pauperis* as moot.

1 *Id.* On November 10, 2015, Rivera moved to withdraw his habeas petition without
2 prejudice. Dkt. 10.

3 The Court construes Rivera's motion as a notice of voluntary dismissal under
4 Federal Rule of Civil Procedure 41(a)(1). Under Rule 41(a)(1)(A), "a plaintiff has an
5 absolute right to voluntarily dismiss his action prior to service by the defendant of an
6 answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v.*
7 *Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999). Respondent has not filed a
8 response to Rivera's habeas petition. Therefore, it is hereby **ORDERED** that Rivera's
9 motion to withdraw habeas petition (Dkt. 10) is **GRANTED**. The Court declines to
10 adopt the R&R (Dkt. 9) as it is now moot. This action is **DISMISSED without**
11 **prejudice**. The Clerk shall close this case.

12 Dated this 30th day of November, 2015.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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